

No 6. THE LORDS repelled the defence, in respect of the reply and condescence foresaid, unless the goods impignorated, and others intromitted with by the wife, did not exceed her share.

Fol. Dic. v. i. p. 592. Stair, v. 2. p. 78.

1675. June 18.

TAYLOR against RANKEN.

No 7.
Property of
money was
inferred by
having the
key of the
chest in
which the
money was.

JOHN TAYLOR, in the contract betwixt James Taylor and Marshall, his spouse, dispones to them his whole moveable goods; and, after his son's death, by a contract with his good-daughter, he, as taking burden for his oyes, dispones the whole moveables to her for 1000 merks. After his death, his three daughters, as executors to him, obtained decret against the said Katharine Marshall and Ranken, now her second husband, in the Regality Court of Falkirk. They suspend on this reason, that the defunct was an indigent person, and lived and died with the defenders; and, by his general disposition, could not be presumed to have any means; and yet the decret in absence was for L. 640 of money, and some body-clothes that were in two chests in the defenders house; which chests were a part of the moveables disposed by the defunct, and to which the defender had frequently access, by opening the chests, and putting any thing therein he pleased. It was *answered*, That this reason is not relevant; because, the defunct having lived long after both his dispositions, did and might acquire this money; *2do*, The charger hath proved, or shall prove, that the defunct had the keys of the chests in his possession the time of his sickness, and delivered the same to one of his good-sons, which sufficiently instructs that the money and clothes were in his possession, and so belonged to him and his executors, albeit the chests were the defenders; for the having of the key doth evidently infer the possession of what is under that key.

Which the LORDS found relevant, unless the defenders, by a positive and stronger probation, could prove, that the money and clothes were theirs, and how the same were put in the chests.

Stair, v. 2. p. 333.

1675. December 17.

THOMSON against ELIES.

No 8.

THE LORDS found, in the case of a right of moveables, granted by a husband to his wife, with the burden of his debts, and a provision that they should be affected with the same, that the property of the goods was settled in the person